

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES E. ARNOLD
DEBORAH C. ARNOLD

Plaintiffs,

v.

PRETRIAL ORDER
00-CV-500A

KRAUSE, INC.,
HOME DEPOT, INC., et al.,

Defendants.

Jury selection for trial of this matter is scheduled for September 25, 2006, at 9:30 a.m. A final pretrial conference is scheduled in this matter for September 19, 2006 at 12:30 p.m. The attorneys who will try the case must attend the conference.

On or before September 15, 2006, counsel are to provide the Court with two sets of the required submissions listed below. One set of the required submissions should be filed in the Clerk's office and the other should be brought directly to the Court's chambers. Each submission should be filed under separate cover.

1. JURY INSTRUCTIONS: The parties must supply copies of their requested charges on the substantive issues. (Each party should also provide to chambers a computer disk containing the requested charge.) Each charge is to be on a separate sheet of paper, in standard form, and contain citations to the authority for the charge. The proposed charges shall be taken from the most recent edition of L. Sand, et al., Modern Federal Jury Instructions or New York Pattern Jury Instructions when New York law is applicable. If a suitable charge is not included in Sand or Pattern Jury Instructions, the parties may submit an alternative charge, as long as it is supported by legal authority. The charges are to be presented in a logical sequence, and this submission should include an index to the charges.

The Court will use these charges to help formulate its own charge. If counsel fails to submit a charge, that charge will not be considered by the Court.

2. PRETRIAL BRIEFS OR OTHER MEMORANDA: The parties shall submit memoranda of law outlining the facts and legal arguments to be made. The memoranda shall include any issues that the Court should consider in order to expedite the trial, as well as any unusual or recurring issues, such as evidentiary issues, that may arise at trial. Any party wishing

to make a motion in limine should include such a motion, along with legal authority, as part of this submission.

3. EXHIBITS: Each party shall submit a list of exhibits it anticipates using at trial. The exhibits must be pre-marked numerically and any sub-exhibits should be pre-marked alphabetically. The parties shall use the Court's form, copy of which is attached, in preparing the exhibit list. Failure to list an exhibit may result in preclusion of that exhibit at trial. Common exhibits should be stipulated into evidence and listed on a joint exhibit form. When possible, other exhibits should also be stipulated into evidence. The stipulation must be submitted to the Court. (See Rule 29 of the U.S. District Court for the Western District of New York Local Rules of Civil Procedure ("Local Rules") for the stipulation procedure.)

Two copies of each documentary exhibit shall be provided to the Court at the pretrial conference. Each set of copies shall be "tabbed" for reference and bound in a three-ring binder or in a similar fashion.

4. VOIR DIRE: Each party may submit up to ten proposed voir dire questions relating to any questions of law or fact that will be relevant to issues to be tried. Additional questions will be considered only upon a showing of good cause. The Court will conduct the voir dire.

5. WITNESS LIST: Each party must submit the names and addresses of all prospective witnesses and a brief summary of their anticipated testimony, including the anticipated date and length of testimony. The list must include rebuttal witnesses, but their anticipated testimony need not be summarized. Failure to meet these requirements with respect to any witness may result in preclusion of testimony by that witness.

6. EXPERT TESTIMONY: The identity, addresses, and a brief summary of the qualifications and testimony of all expert witnesses are to be supplied. Counsel may enter into a written stipulation prior to the pretrial conference setting forth the qualifications of each expert witness. Failure to include an expert witness on the expert witness list may result in preclusion of testimony by that witness.

7. VERDICT FORM: Each party is to submit a proposed verdict form, including any special interrogatories that are appropriate.

8. DEPOSITION TESTIMONY: If a party intends to use deposition testimony during the course of the trial, that party's counsel must notify opposing counsel prior to the conference of the deposition testimony intended to be offered. See Fed. R. Civ. P. 30. Counsel should stipulate to the admissibility of such testimony and attempt to resolve any disputes prior

to the conference. To the extent disputes cannot be resolved, counsel shall submit written objections specifying the nature and bases for such objections. The objections shall be supported by legal authority. Responses to such objections should be filed. The Court will reserve ruling on the objections until the time of trial unless counsel indicate that an earlier resolution is necessary.

Counsel should also be prepared to discuss the narrowing of issues for trial and to cooperate in eliminating claims which are no longer germane. The goal of the pretrial conference is to help make certain that the trial proceeds in a clear and orderly fashion. The parties are to comply with this Order so that this goal will be attained.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: August 25 , 2006

